

**Deposition Designations for:
EDWARD A. GASTON
March 22, 1999**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in
Evidence**

AO = Attorney Objection

BE = Best Evidence

Cum. = Cumulative

Ctr = Counter Designation

Ctr-Ctr = Counter-Counter

ET = Expert Testimony

F = Foundation

408 = Violation of FRE 408

H = Hearsay

IH - Incomplete Hypothetical

L = Leading

LA = Legal Argument

LC = Legal Conclusion

LPK - Lacks Personal Knowledge

LO = Seeking Legal Opinion

NT = Not Testimony

Obj: = Objection

R = Relevance

S = Speculative

UP = Unfairly Prejudicial under Rule 403

V = Vague

Page 1

1 MONTANA NINETEENTH JUDICIAL DISTRICT COURT
2 LINCOLN COUNTY
3

4 Cause No. DV-98-142

5 EDWARD A. GASTON,)
6 Plaintiff,)
7 -vs-)
8 W.R. GRACE & CO.-Conn., a)
Connecticut corporation;)
9 EARL D. LOVICK and DOES I-IV,)
10 Defendants.)
11)
12)

13 DEPOSITION OF
14 EDWARD A. GASTON
15 (On Behalf of Defendants.)
16
17
18
19
20
21

22 Venture Motor Inn
23 443 Highway 2 West
Libby, Montana
24 Monday, March 22, 1999 -- 3:00 p.m.

25 Reported by Beth Gilman, RPR and Notary Public for
the State of Montana, County of Flathead

HEDMAN, ASA & GILMAN REPORTING - 752-5751/752-3334
P. O. BOX 394 -- KALISPELL, MONTANA

1 or Ed, it's important that you and I communicate
2 with one another, so if I ask you a question that
3 you don't completely understand, please just tell me
4 and I'll rephrase it so that you do understand it
5 and you're answering the question that I'm asking.

6 A. All right.

7 Q. Okay. How old are you?

8 A. Seventy-one in September.

Libby

9 Q. Mr. Gaston, how would you describe your
10 general health as you sit here today?

11 A. It wasn't too bad until awhile back.
12 Last -- You know, first part I started getting a
13 cough and I got phlegm in my throat, phlegm caught
14 in my throat. Otherwise I've been pretty good up
15 until that time.

16 Q. Do you remember about when that was, Mr.
17 Gaston?

18 A. I don't know. Must have been January of
19 last year.

20 Q. So roughly about January of 1998 you
21 started getting a cough?

22 A. That's right. That's right. Seemed like
23 the phlegm was coming from my throat.

24 Q. Okay. Do you have any trouble breathing
25 at times?

Libby

1 A. Not really. I suppose if I go up the
2 stairs a long time, or up a hill, I suppose I
3 probably would, but I really haven't had to do it,
4 so I never realized it was a problem.

5 Q. Okay. So in your everyday life, as you're
6 functioning everyday, you don't seem to have much of
7 a problem with shortness of breath?

8 A. No, not -- My big problem is my nose and
9 ears get stuffed up. I think it's caused by
10 allergies or something, because I have these spells
11 and I can't hear too good. That's one of my big
12 problems.

13 Q. Are you having any trouble hearing me
14 right now, Ed?

15 A. Not too much, no. I can hear you, but
16 I -- It isn't real -- I think these tubes get
17 plugged up in my throat. That's part of my problem.

18 Q. Well, make sure that if you don't hear
19 something or you're not sure exactly what I say,
20 please just give me a holler.

21 A. That's right. I understand what you're
22 saying.

23 Q. Ed, are you under any medication for that
24 cough that you were talking about?

25 A. Well, the doctor gave me some Prednisone,

Libby

1 or something like that. He told me to take two a
2 day for a week and then one a day. I just keep
3 getting these prescriptions for awhile, so that's
4 what I've been taking. It seems to help some. And
5 I take vitamins and things like that.

6 Q. So your cough has reduced somewhat after
7 taking this medication?

8 A. Yeah, I believe it has. I had a burst of
9 air there for awhile now.

10 Q. Ed, you were diagnosed last summer with
11 asbestosis. Are you aware of that?

12 A. That's right. That was Dr. Johnson.

13 Q. What is your understanding of what that
14 is?

15 A. Well -- Well, I understand that the
16 particles get in your lungs and you can't get it
17 out. That's what I understand.

18 Q. Now, Ed, prior to getting this cough in
19 the early part of 1998, would you describe your
20 health as pretty good?

21 A. Yes, I do.

22 Q. Other than this medication that you're on
23 for your cough, are you on any other medication?

24 A. No.

25 Q. You're not on any type of inhalant or

Arrowood
Obj.
H;F

Page 19

1 were cutting way down on their crews.

2 They did that twice. Second time I took
3 it up. The second time up there she said, Would you
4 like to take that? I'll figure out how much you get
5 for the company pension and, she said, you might
6 just want to take it, so come on up to the office
7 and sign up.

8 That was in February, and then September
9 they closed everything up. I had an idea that they
10 would.

11 Q. Is that why you took the severance,
12 because you figured they were going to close down?

13 A. That's right, I figured they were going to
14 close down. They did pretty good on the severance
15 pay. They was pretty generous about it.

Libby [16 Q. Ed, you worked for W. R. Grace for about
17 31 years; is that right?

18 A. April, '59.

19 Q. Were you happy working up there?

20 A. Yeah, it wasn't all that bad. It was a
21 lot better than some jobs I had. It wasn't all that
22 bad, really.

23 Q. Ed, in some written discovery that was
24 given to us, it indicated that you were a
25 construction worker before you started working at

1 mortar?

2 A. No.

3 Q. You graduated from Troy High School in
4 1946?

5 A. That's right, '46.

6 Q. Ed, did you have any other formal
7 education after that?

8 A. No.

9 Q. How about any training? Did you ever go
10 to any training courses or training schools?

11 A. No.

Libby

12 Q. And I think you said you started with
13 Grace in April of '59?

14 A. Right. A pretty good place to work in one
15 way because they didn't just lay you off when things
16 went -- They would just keep you anyway, you know.
17 Construction jobs, they don't need you, away you go.

18 Q. So a little steadier up at the mine?

19 A. Construction jobs, the boss knows you as
20 "Hey, you," and the mine people knows you by your
21 number. A little different up there.

Libby

22 Q. What was the first job you had up there at
23 the mine? Do you remember?

24 A. Okay. When I first started working, I was
25 on a construction job. Dutch Flatt, that was the

Libby

1 mill superintendent, and I bid at the mill as a
2 sweeper, and a sweeper, he fills in for the top
3 floor operator when he's gone and also the skip
4 operator.

5 Q. Could we back up a little bit? You said
6 you were in the construction department?

7 A. That's right, just for a short time.

8 Q. That was going to be my question. Do you
9 remember about how long?

10 A. A little over a month is all.

11 Q. Oh, okay. And then you bid what job?

12 A. The sweeper in the mill.

13 Q. That was in the dry mill?

14 A. Yeah. They had three people in the mill
15 and -- three people on each shift in the dry mill
16 and they had two operators in the wet mill, and then
17 had a wet mill cleanup man. And that's all they
18 had, you know, except a tester. That's all they had
19 at that time. So they was getting by pretty good.

20 Q. How long were you a dry mill sweeper?

21 A. Oh, during that one summer, the summer of
22 '59.

23 Q. And what did a dry mill sweeper do?

24 A. Just sweep all the dirt down these holes
25 and goes down to the tail belt.

Libby

- 1 Q. Is that a dusty job?
- 2 A. Yeah, it is.
- 3 Q. Did you ever wear a respirator?
- 4 A. I wore it a lot of the time, yes, I did.
- 5 Q. Were you told to wear a respirator, Ed?
- 6 A. Yeah, I was.
- 7 Q. Who told you?
- 8 A. Okay. Dutch Flatt was the mill
- 9 superintendent. He said, Be sure and wear a
- 10 respirator.
- 11 He broke me in on the job. He was a
- 12 supervisor. He broke me in on the job and told me
- 13 what to do. He was in charge of everything, and he
- 14 had all the shops and everything. After he left it
- 15 took four men to take his place. He seemed to know
- 16 what he was doing.
- 17 Q. Did he tell you why you should wear a
- 18 respirator when you were sweeping?
- 19 A. No, he didn't say nothing. Never said
- 20 anything.
- 21 Q. He just said to wear a respirator and you
- 22 did so?
- 23 A. Because sometimes it was dusty in there.
- 24 You could see that it was. They had a big 600 fan
- 25 in there that was supposed to take the dust off

1 these hoods on the screens. It done some good, you
2 know. It did.

3 Q. But didn't get it all?

4 A. Oh, no, because there was times when it
5 was a lot more dusty than others.

Libby

6 Q. What did you do after you became a
7 sweeper?

8 A. Okay. Well, Dutch Flatt came over and got
9 me, and they started this -- called a spiral tester,
10 and he got it up, so all of us had to come over and
11 he just told us what we had to do. We did that for
12 awhile, and after awhile some guy went to the
13 research department and I was the shift tester. We
14 would alternate shift, graveyard, swing and days.

15 Q. And what does a tester do?

16 A. Well, picks up samples in the mill every
17 hour and he takes them down and analyzed them, you
18 weigh them and put them in a furnace. They had a
19 fan that was a vibrating fan and you blow all the
20 vermiculate off for the rock.

21 Q. What were you testing for?

22 A. You tested for expansion, for one thing.
23 Some of the ore was a lot better than others. They
24 did that and told the customers what kind of ore
25 they had.

1 Then they had a car sample tester too and
2 test each car as they were loading it.

3 Q. So you were basically testing for the
4 quality of the ore?

5 A. That's right, because the less rock the
6 better the customer liked it.

Libby

7 Q. Was there much dust when you were a
8 tester?

9 A. Not in the test lab itself, no, but we
10 would go up through the mill, go up through the dry
11 mill and pick up samples and go to the wet mill and
12 come back to the wet mill again.

13 Q. And it was dusty up in the dry mill?

14 A. Oh, yes, it was.

15 Q. But where you were working as a tester it
16 wasn't dusty?

17 A. Not in the test lab itself it wasn't.

18 Q. Would you wear a respirator when you would
19 go up into the dry mill to get your samples?

20 A. That's right.

21 Q. Is that a yes?

22 A. That's right.

23 Q. Who trained you to be a tester?

24 A. Dutch Flatt. He was the mill
25 superintendent. After he left, well, Walt Baker and

1 Alvin Nicholls was the supervisors then.

2 Q. Did you say Dutch Flatt?

3 A. Okay, well, these other four guys took
4 over after Dutch Flatt left. One of them was Bud
5 Vinion. He was the quality control supervisor.

6 Q. Did anyone else besides Dutch Flatt ever
7 tell you to wear a respirator?

8 A. Oh, not that I recall, no. Some people
9 were pretty particular about wearing them, and
10 others didn't -- they didn't care.

11 Q. You saw people wearing a respirator?

12 A. Well, the operators wore respirators a
13 lot, but the millwrights didn't. They was always
14 busy with their hoods or goggles or something and
15 they didn't pay attention to respirators. They just
16 didn't do it. The guys in the construction areas
17 didn't use respirators either.

18 Q. Did you ever hear anybody in Grace
19 management telling other employees to use
20 respirators?

21 A. Not really, no. It was just -- No, I
22 don't think they really insisted on it. I don't
23 think they were.

Libby

24 Q. How long were you a tester?

25 A. Oh, a little over ten years in the old

Libby

1 mill. I was a tester for awhile in the new mill,
2 more recent times.

3 Q. But you were a tester for about ten years
4 when the old dry mill was running?

5 A. That's right.

6 Q. Then what did you do, Ed?

7 A. Oh, I bid on the tails belt.

8 Q. Excuse me?

9 A. Tails belt. It ran through the wet mill
10 first and then through the dry mill a ways, and then
11 the sweepers got all of it except what is actually
12 under the belt, and they just shoveled it up into a
13 big ball.

14 It was a good job until they started that
15 filter house. It would go haywire and make a big
16 mess and fill that whole tunnel up with mud. Just
17 really gross.

18 Q. Was it more labor-intensive than being a
19 tester?

20 A. Yeah, probably so. Oh, none of them jobs
21 were actually all that hard. They really weren't.
22 Like top floor operator, anybody could do that. It
23 wasn't all that hard a job. All they did was grease
24 and brush the screens. That's all they had to do.

25 Q. And how long were you a tails belt

Libby

1 operator?

2 A. I don't know. Somewhere around two years
3 or somewhere in that time.

4 Q. Was there a lot of dust around then?

5 A. No, there wasn't. There wasn't a lot on
6 the tails belt itself. It had a gadget that went
7 way out over the tails belt.

8 Q. Did you wear a respirator when you did
9 that job?

10 A. Not on the side on the tails belt. I did
11 when I was in the dry mill. You would have to go
12 there just for a short time each day and get what
13 was underneath the belt.

Libby

14 Q. Now, after the two years, what job did you
15 take then?

16 A. Oh, that's when they went to the new mill,
17 and I worked on the big belts up on top, and also I
18 worked down at the screening plant. Also they would
19 have us extra go out there in what they called the
20 skid house is where the tailings were.

21 Kind of mixed up there for awhile because
22 they would send us to different jobs, so we had to
23 just do what they wanted us to do around the new
24 mill until it broke down, and we would run the old
25 mill for a few days until they got it fixed. Took a

Libby

1 long time to get into the new mill.

2 Q. When the new mill was in and things kind
3 of settled down --

4 A. That's right.

5 Q. -- what was your job then?

6 A. Oh, they wanted -- First when they went to
7 the new mill they wanted just to transfer us to our
8 similar jobs in the new mill. Union made a big fuss
9 over it. They wanted to bid on the job. I didn't
10 have any department and I had to do something, so I
11 bid on the screening plant down there to get into a
12 department.

13 Q. And is that the job you did, in the
14 screening plant then?

15 A. Yeah.

16 Q. What did you do in the screening plant?

17 A. Okay. What you do, they have a number 1
18 operator and a number 2 operator. Number 1
19 operator, he pushes buttons and makes sure
20 everything -- and the number 2 operator fills in for
21 them and also sweeps with a big vacuum cleaner, and
22 you change screens.

23 Q. Did you wear a respirator when you were
24 working in the screening plant?

25 A. Yes, and some places we had to wear ear

1 plugs too. It wasn't too bad except in the winter.
2 It was cold in there in the winter, all that wind
3 blowing through there. Gee, so cold you couldn't
4 stand it.

Libby

5 Q. How long did you work in the screening
6 plant?

7 A. A little over two years. From there I
8 went on to the big belts up on top, the one coming
9 to the transfer point.

10 Q. And what did you do there?

11 A. Oh, they had the big belts up on top and
12 you grease them every so often, and they clean up
13 the messes underneath if something goes wrong. It
14 was a good job until something went wrong and then
15 you had to do quite a bit of doing to get that stuff
16 back on to the belt again. We swept with a broom
17 too, you know. You go through it everyday and sweep
18 it down through the cracks about that wide on each
19 side, just sweep it out. Later on they had a vacuum
20 system in there and they done it with that.

21 Q. And when you were working with the big
22 belts, did you wear a respirator then?

23 A. Some jobs when you're working down in OS &
24 B you did, but up on the belts it really wasn't all
25 that dusty. Transfer point really wasn't all that

1 dusty either. But the OS & B, they were dusty. The
2 belts themselves weren't all that bad.

3 Q. And I think you indicated you did that for
4 about two years; is that right?

5 A. Yeah.

Libby

6 Q. And then what did you do?

7 A. Well, then they eliminated the job so I
8 didn't have any place to go, so I went back to the
9 old job that I had as a number -- utility man. Just
10 like the number 3 operator, see.

11 Q. In the screening plant?

12 A. No. In the wet mill up there.

13 Q. Oh.

14 A. You didn't have to know a lot to do that
15 because mostly it's just cleaning up and checking
16 things out. But the number 2 operator had the worst
17 job. He had a lot to do.

18 Q. And did you take the number 2 operator
19 job?

20 A. No. I didn't like that at all. I got
21 stuck with it for awhile. I thought it was a
22 terrible job, get all wet all the time, gee whiz.
23 Terrible in the winter. The number 1 operator sat
24 at the control room and pushed buttons. Number 2
25 would run the top floors, and the utility man would

1 issued us coveralls and paid for them, coveralls,
2 but you would have to leave them up there. We
3 weren't supposed to take them home; we would leave
4 them up there.

Libby

5 Q. I see. Now, after you worked in the test
6 lab, where did you work then?

7 A. Oh, I bid on the dust truck because that's
8 the only way I could get into a department. See,
9 they divided up all these departments real fine, and
10 I didn't have anything left out of the department
11 and I had to bid on that. Anyway, at the time they
12 had it it was part of the screening plant.

13 Q. So how long were you a dust truck driver?

14 A. Oh, about two years, something like that.
15 I don't know exactly. I suppose I got the records
16 someplace. I don't remember for sure.

17 It was kind of a hard job though. We have
18 to hook up all them hoses and go around and collect
19 the dust samples out of the bins, you know. I would
20 go over there on a -- across the river and get the
21 samples from -- the dust from the loading place,
22 sometimes fill up the entire truck and have to put
23 out to the popping plant, and sometimes go down
24 there to the loading bins, and they had four cycles
25 down there and they would pick up the truck, take it

Libby

1 up and dump it in a -- in a tails pond right
2 directly under the water.

3 Q. Do you remember why you would collect dust
4 samples? What was the purpose of that?

5 A. What samples?

6 Q. Dust samples. You said you would collect
7 dust samples.

8 A. No, we didn't. Later on they had those
9 little discs that that lady put on us and go around
10 and she would check them out once in awhile. But
11 that's the only thing we knew about that. They
12 hired somebody for that.

13 Q. What did you do after you were no longer a
14 dust truck driver?

15 A. That's when they asked us to leave. They
16 said, If anybody wants to leave now, and quite a few
17 of them took it. They was going to cut way down on
18 the crews, just trying to economize for some reason...

19 Q. So the last job you had there was dust
20 truck driver?

21 A. Yeah.

22 Q. Did you wear a respirator as a driver?

23 A. Yes.

24 Q. Ed, were you ever a supervisor up there at
25 the mine?

1 Grace in 1959; correct?

2 A. Right.

Libby

3 Q. I would like to talk specifically about
4 the 1960s for a moment; okay?

5 A. Okay.

6 Q. During the 1960s, do you recall any
7 improvement with regard to the dust problem up there
8 at the mine?

9 A. No. No.

10 Q. Do you remember the company trying to do
11 anything to reduce the amount of dust in the '60s?

12 A. No. No.

13 Q. How about in the '70s? Do you remember
14 the company doing anything to reduce the dust?

15 A. No, I don't believe they did.

16 Q. Do you ever recall it being stated that
17 that was one of the reasons they put in the new
18 mill, to reduce the dust, in the '70s?

19 A. No, I don't believe it was. I think -- I
20 don't know what all went on, but when Grace was
21 going to buy the mill, the people came here and they
22 wanted -- Anyway, Grace came here and met just five
23 hours with us altogether, and they took him around
24 up there at the mill and put the people in all the
25 offices and went through the books. And they wanted

Libby

1 to do that so they could build a new mill, which was
2 quite expensive though. Seems to me like they go to
3 a lot more expense than what they really have to,
4 make something more elaborate and costly than what
5 they really need to have.

6 Q. Ed, was there a big difference in the
7 amount of dust you had to deal with when you were
8 working inside the mill as opposed to outside the
9 mill?

10 A. Oh, probably -- Oh, there was quite a bit
11 inside the mill, and down there where they loaded
12 the trucks down at the lower bins where the skip
13 went down, it was quite dusty down there.

14 Q. Outside of that place, was there a big
15 difference in the dust that was outside --

16 A. That's right. Some places was a lot more
17 dusty than others.

18 Q. Do you remember the kind of respirator you
19 used to use?

20 A. First we had those respirators that was
21 metal, you know, aluminum, and they had a rubber
22 thing around there and they had a little filter that
23 you put inside. We used those first. Used several
24 different kinds that they had there.

25 Q. What were some of the other kinds that you

Page 58

1 could be dangerous if you breathed it?

2 A. No, I didn't.

3 Q. When did you find out that it could be
4 dangerous to breathe in that dust?

5 A. Oh, I don't know. No specific time. I
6 really didn't.

7 Q. Within the last year did you hear that?

8 A. You mean the last year I was working up
9 there?

10 Q. No. The last year from right now. Within
11 the last year, is that when you first heard that it
12 could be dangerous?

13 A. I suppose, yeah. People probably
14 mentioned it, but people weren't real specific about
15 it at any time. Never was.

Libby

16 Q. Did you ever ask anybody, Ed, why they had
17 that chest x-ray program up at the mine?

18 A. No. They started that in '59 when I first
19 started working up there and I took it every year.
20 They didn't say anything about it. Maybe it was
21 some kind of regulation that they were supposed to
22 do through the state. I don't know what it was.

23 Q. They didn't explain to you why?

24 A. No.

25 Q. And you never asked anybody why?

Libby

- 1 A. No.
- 2 Q. Did you receive the report back about the
- 3 conclusion of the chest x-ray?
- 4 A. Oh, yes.
- 5 Q. Who would tell you about that?
- 6 A. Oh, I think the doctors that they -- They
- 7 just give you a little slip there. It wasn't
- 8 specific about anything.
- 9 Q. And the slip that they gave you always
- 10 indicated that your chest x-ray was fine?
- 11 A. That's right.
- 12 Q. Do you remember taking pulmonary function
- 13 tests too?
- 14 A. No, they didn't. Later on they had the
- 15 breathing tube. That's all. That was just later
- 16 on. It wasn't early.
- 17 Q. Okay. Later on when you started doing
- 18 that tube thing, that pulmonary function test --
- 19 A. Yeah.
- 20 Q. -- did they tell you why you were doing
- 21 that?
- 22 A. No, they didn't tell us anything like
- 23 that.
- 24 Q. Did you ask anybody why you were taking
- 25 those?

Libby [

- 1 A. No.
- 2 Q. You never smoked?
- 3 A. No.
- 4 Q. Do you remember when Grace invoked the
- 5 non-smoking policy up at the mine?
- 6 A. I don't remember exactly what time it was,
- 7 but when they had it, well, union people wanted to
- 8 arbitrate it so they wouldn't have to have it, but
- 9 they lost the arbitration.
- 10 Q. There were a lot of folks up there that
- 11 wanted to continue to be able to smoke up there;
- 12 right?
- 13 A. Yeah, they would hide out.
- 14 Q. Were there a lot of employees that would
- 15 hide out and smoke even after the policy?
- 16 A. Oh, sure. Oh, sure. Oh, yeah, a lot of
- 17 them did that.
- 18 Q. At that time do you recall the company
- 19 telling the employees why they were invoking the
- 20 non-smoking policy?
- 21 A. No, they didn't. No, they didn't. No.
- 22 Q. Ed, I'm going to hand you what we've
- 23 marked as Exhibit 187a and ask that you look at
- 24 that. Do you recognize that, Ed?
- 25 A. No, never seen it until now.